Schoolhouse Togs, Inc. *and* Local 533, International Ladies' Garment Workers' Union, AFL–CIO. Case 1–CA–27784

March 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge and an amended charge filed by the Union on, respectively, November 9 and December 10, 1990, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on December 13, 1990, against Schoolhouse Togs, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Copies of the charges and complaint were duly served on the Respondent.

The complaint alleges in substance that the Respondent has failed and refused to make payments to various fringe benefit funds, as provided for in the 1988–1991 collective-bargaining agreement between the Union and the Respondent. The Respondent timely filed an answer and an amended answer to the complaint admitting the factual allegations of the complaint, but denying that it committed any unfair labor practices.

On December 12, 1991, the General Counsel filed a Motion to Transfer Proceeding to the Board and for Summary Judgment. The General Counsel's motion argues that, because all the factual allegations of the complaint have been admitted and the Respondent has raised no valid defense, the Motion for Summary Judgment must be granted.

On December 18, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits the operative facts giving rise to the unfair labor practices alleged in the complaint. Thus, it acknowledges the exclusive representative status of the Union and the appropriateness of the unit. The Respondent concedes that there have been a succession of collective-bargaining agreements between the parties, culminating in the current contract, which is effective by its terms from June 15, 1988, through June 15, 1991. It also admits that since on or about May 10, 1990, it unilaterally ceased making contributions to various fringe benefit funds as provided for in the contract.

The Respondent denies the conclusionary unfair labor practice allegations of the complaint without explanation. Because the operative facts are admitted, we find that the Respondent's bare, one-word denials are insufficient to refute allegations of violations and that no material issues have been raised.[1] Accordingly, we find all the allegations of the complaint to be true and we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation with an office and place of business in Rockland, Maine, engaged in assembling children's clothing. During the calendar year ending December 31, 1989, the Respondent provided goods and services valued in excess of $50,000 directly to enterprises located outside the State of Maine. The Respondent admits, and we find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Representative Status of the Union*

The following employees of the Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All production, packing and shipping employees employed by the Respondent but excluding all other employees, guards and supervisors as defined in the Act.

Since about June 15, 1988, and at all times material, by virtue of Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and since that date has been recognized as such representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement, which was effective by its terms from June 15, 1988, through June 15, 1991.

[1] Member Oviatt agrees. See *Tammy Sportswear Corp.*, 302 NLRB No. 149, slip. op. at 3 fn.1 (May 9, 1991); cf. his dissent in *Zimmerman Painting & Decorating*, 302 NLRB No. 135 (May 9, 1991).

B. *Refusal to Comply with the Contract*

Since about May 10, 1990, the Respondent has failed and refused, and continues to fail and refuse, to make payments to various fringe benefit funds as provided for in the contract. The contractual provisions with which the Respondent failed to comply relate to wages, hours, and other terms and conditions of employment in the unit and are mandatory subjects for purposes of collective bargaining. We find that the Respondent has failed and refused to bargain collectively with the representative of its employees, in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By failing and refusing to make fringe benefit fund contributions on behalf of its unit employees as required by its collective-bargaining agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to honor and abide by the terms of its 1988–1991 collective-bargaining agreement with the Union and to make whole unit employees, with interest, for any losses they suffered because of the Respondent's failure to comply with the terms of the contract, and to remit to the various fringe benefit funds the contributions required by the agreement for the period beginning May 10, 1990.[2] The Respondent shall also reimburse its employees for any expenses ensuing from its failure to make contributions to the funds, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn.2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be with interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Schoolhouse Togs, Inc., Rockland, Maine, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to make payments to the various fringe benefit funds as required by its collective-bargaining agreement with Local 533, International Ladies' Garment Workers' Union, AFL–CIO, on behalf of the unit employees. The unit is:

> All production, packing and shipping employees employed by the Respondent but excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor and abide by the terms of its collective-bargaining agreement with the Union.

(b) Make whole the unit employees for any losses they may have suffered as a result of the Respondent's refusal to honor the terms of its collective-bargaining agreement in the manner described in the remedy section of this decision.

(c) Make whole the various fringe benefit funds for any payments the Respondent failed to make for the period beginning May 10, 1990, in the manner described in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of reimbursements due.

(e) Post at its Rockland, Maine facility copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[2]Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

[3]If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to make contributions to the various fringe benefit funds as required by our collective-bargaining agreement with Local 533, International Ladies Garment Workers Union, AFL–CIO (the Union).

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor and abide by the terms of our collective-bargaining agreement with the Union on behalf of the unit employees. The unit is:

> All production, packing and shipping employees employed by the Respondent but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL make whole the unit employees for any losses they may have suffered as a result of our refusal to honor and abide by the terms of our collective-bargaining agreement from May 10, 1990, with interest.

WE WILL make whole the various fringe benefit funds for any payments we failed to make from May 10, 1990.

SCHOOLHOUSE TOGS, INC.